1523/E dtd 14.08.2002

Filing of affidavits / affidavits-in-reply before the Supreme Court, High Court (Original Side), (Appellate Side), Bombay & its Benches at Aurangabad & Nagpur & Maharashtra Administrative Tribunal, Bombay, Aurangabad & Nagpur.

GOVERNMENT OF MAHARASHTRA
Law and Judiciary Department
Circular No. 1523/E
Mantralaya, Mumbai – 400 032 Dated the : 14th August 2002

CIRCULAR

Attention of all the Administrative Departments of Mantralaya and all the Government Law Officers in the State is invited to the observations made by Hon'ble High Court, Bench at Aurangabad in the recent judgement/order dt. 18.6.2002 passed in Writ Petition No. 4653 of 2002 (Gurubasappa s/o Basayya Swami Vs State of Maharashtra and others). The observations of Their Lordships are reproduced as under: -

"We have found in number of cases that affidavit in reply filed by various Government offices through the office of the Government Pleader do not reflect the correct statement of facts. By stating incorrect facts on oath not only the deponent who files such incorrect statement exposes himself to criminal action as well as action under contempt of Courts Act, but an advocate who drafts such affidavit also becomes liable for such action. We have repeatedly cautioned the law Officers (Assistant Government Pleaders) appearing before us to take full care while drafting the affidavits on behalf of the State Government but the improvement is not visible. May be because the Court has been liberal in condoning such conduct. We have made it clear now to

or otherwise, on the part or the Assistant Government Pleaders may entail in serious consequences. In the present case initially affidavit-in-reply has been filed on behalf of the respondent No. 3 by one Sow. Usha w/o Uttamrao Chandegave, Naib Tahsildar (EGS), Udgir, District Latur. wherein para 7 of the affidavit the following statement has been made :

" 7. I say and submit that the Government Resolution dated 14.6.1999 has been stayed by the Hon'ble High Court and therefore the Government has issued communication, dated 6.11.99 thereby granting stay to further process for granting licence to various persons"

The aforesaid statement is factually incorrect and we are shocked to find that Mr. N.B.Khandare, Assistant Government Pleader who drafted and settled this affidavit did not verify the facts. What has been ordered on 29.11.1999 by the Division Bench of this Court is staying implementation of Government Resolution dated 14.6.1999 to the extent of the petitioner in that Writ Petition No. 5600 of 1999. This Court did not generally stayed Government Resolution dated 14.6.1999 as stated on oath in para 7.

Subsequently, in the affidavit filed by one Avinash H. Rankhamb, Tahsildar, Uddir, this fact is admitted. A copy of this order may be sent to the Chief Secretary and the Principal Law Secretary of the State Government to ensure that such lapses do not recur and in the affidavits filed on behalf of the State Government correct factual position is reflected".

In view of the above observations, all the Administrative Departments of Mantralaya are informed to mention the correct and true factual aspects in detail in the affidavits/affidavits-in-reply to be filed before the Hon'ble Supreme Court, Hon'ble High Court (O.S.), (A.S.), Bombay and Hon'ble High Court, Benches at

Nagpur and Aurangabad and the Maharashtra Administrative Tribunal, Bombay, Nagpur & Aurangabad. These departments are further informed to bring this circular also to the notice of all the offices/officers under their control and to direct such offices/officers to follow the above instructions scrupulously.

Similarly, all the Government Law Officers are informed to take full care that, while drafting and settling the affidavits/affidavits-in-reply on behalf of the State Government, the correct statement of facts has been mentioned in such affidavits. The Government Law Officers are informed to follow these instructions scrupulously, failing which a serious action shall be taken against them.

By order and in the name of the
Governor of Maharashtra

12/8 7-002

(J.R.Deshpande)
Joint Secretary to Government

Copy to :-

1) The Government Advocate, Supreme Court, Maharashtra Sadan, Copernicus Marg, New Delhi. He is informed to bring this circular to the notice of all the Government Law Officers/Additional Government Advocates working in his office and to request to follow the aforesaid instructions, failing which a serious action shall be taken against them.
2) The Government Pleader, High Court (Original Side), Mumbai. He is informed to bring this circular to the notice of all the Government Law Officers/Assistant Government Pleaders working in his office and to request them to follow the aforesaid instructions, failing which a serious action will be taken against them.
3) The Government Pleader, High Court, Mumbai.
4) The Additional Government Pleader, High Court (Appellate Side), Mumbai. He is informed to bring this circular to the notice of all the Government Law Officers/Assistant Government Pleaders working in his office and to request them to follow the aforesaid instructions, failing which a serious action will be taken against them.

5) The Government Pleader, High Court, Aurangabad. He is informed to bring this circular to the notice of all the Government Law Officers/Assistant Government Pleaders working in his office and to request them to follow the aforesaid instructions, failing which a serious action will be taken against them.

6) The Government Pleader, High Court, Nagpur. He is informed to bring this circular to the notice of all the Government Law Officers/Assistant Government Pleaders working in his office and to request them to follow the aforesaid instructions, failing which a serious action will be taken against them.

7) The Chief Presenting Officer, Maharashtra Administrative Tribunal, Mumbai. He is informed to bring this circular to the notice of all the Government Law Officers/Presenting Officers etc. working in his office and to request them to follow the aforesaid instructions, failing which a serious action will be taken against them.

8) The Chief Presenting Officer, Maharashtra Administrative Tribunal Aurangabad. He is informed to bring this circular to the notice of all the Government Law Officers/Presenting Officers etc. working in his office and to request them to follow the aforesaid instructions, failing which a serious action will be taken against them.

9) The Chief Presenting Officer, Maharashtra Administrative Tribunal Nagpur. He is informed to bring this circular to the notice of all the Government Law Officers/Presenting Officers etc. working in his office and to request them to follow the aforesaid instructions, failing which a serious action will be taken against them.

10) The Joint Secretary to Government, Law and Judiciary Department, Aurangabad.

11) The Joint Secretary to Government, Law and Judiciary Department, Nagpur.

12) All Branches/Desks, Law and Judiciary Department, Mantralaya, Mumbai.

13) All the Departments of Mantralaya.

14) All Deputy Secretary (Law)/Under Secretary (Law).